

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "B" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 8521/Del/2019
निर्धारणवर्ष/Assessment Year: 2014-15

ACIT, Circle : 8 (2) New Delhi.	बनाम Vs.	M/s. Ecocat India Pvt. Ltd., 12-A, Shivaji Marg, New Delhi - 110 015.
		PAN No. AAACV2674G
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by :	Shri K. Sampath, Adv. ; Shri R.K. Raghvan, Adv. ; & Shri V. Rajakumar, Adv.
राजस्वकीओरसे / Department by :	Shri Vivek Kumar Upadhyay, Sr. D. R. ;

सुनवाईकीतारीख/ Date of hearing :	24/08/2023
उद्घोषणाकीतारीख/Pronouncement on :	17/11/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-3 [hereinafter

referred to CIT (Appeals)] New Delhi, dated 9.08.2019 for assessment year 2014-15.

2. The Revenue in its appeal has raised the following substantive grounds of appeal:-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.7,49,88,607/- made by the Assessing Officer on account of disallowance under section 35(2AB) of the Income Tax Act,1961.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.2,20,00,000/- made by the Assessing Officer under section 68 of the I.T. Act, 1961.”

3. Briefly stated the facts are that the assessee a Pvt. Ltd. Company engaged in the business of manufacture of catalytic converters for various diesel, petrol and CNG engines, filed its return of income on 7.02.2015 declaring ‘NIL’ income under normal provisions of the Act and book profit under section 115JB of the Income Tax Act, 1961 (the Act) at Rs.3,71,88,159/-. The assessment was completed under section 143(3) on 14.12.2016 determining the income at Rs.11,32,54,030/- under normal provisions of the Act and book profit at Rs.3,71,88,159/- as declared by the assessee. While completing the assessment the Assessing Officer denied claim for deduction of Rs.8,83,89,286/- under section 35(2AB) of the Act on the ground that the prescribed authority has not issued approval for qualifying for weighted deduction in Form No. 3CL until the date of completion of assessment as required under sub section 6(d) of section 35(2AB) of

the Act. The assessee preferred an appeal before the Id. CIT (Appeals). In the course of appellate proceedings the assessee furnished Form No. 3CL issued by DSIR on 24.01.2017 approving capital expenditure of Rs.45.70 lakhs and Revenue expenditure of Rs.261.62 lakhs totaling to Rs.307.32 lakhs as eligible expenditure under section 35(2AB) of the Act. The Id. CIT (Appeals) based on the certificate issued by DSIR in Form No. 3CL allowed the claim for weighted deduction under section 35(2AB) of the Act to the extent of Rs.6,14,64,000/-. The Id. CIT (Appeals) also allowed expenditure of Rs.1,35,24,607/- as allowable Revenue expenditure under section 37(1) of the Act which the DSIR did not approve this expenditure to be eligible for Revenue expenditure under section 35(2AB) of the Act.

4. The Id. DR strongly supporting the order of the Assessing Officer submits that it is the finding of the Assessing Officer that the assessee is not carrying out any R & D activity and also in the absence of Form No. 3CL issued by DSIR the Assessing Officer is justified in denying the weighted deduction claimed by the assessee under section 35(2AB) of the Act and revenue expenditure under section 37(1) of the Act.

5. On the other hand, the Id. Counsel for the assessee supported the orders of the Id. CIT (Appeals). The Id. Counsel further submits that for the immediately preceding assessment year i.e. assessment year 2013-14 the Tribunal on identical facts allowed the claim for weighted deduction under section 35(2AB)/37(1) of the Act. Copy of the order is placed on record. The Id. Counsel for the assessee further submits that as a matter of fact the Assessing Officer

himself allowed weighted deduction under section 35(2AB) of the Act while completing the assessment for the assessment years 2015-16 and 2016-17 on the entire R & D expenditure claimed by the assessee.

6. Heard rival contentions perused the orders of the authorities below and the decision of the Tribunal in assessee's own case. On perusal of the assessment order we observe that the weighted deduction under section 35(2AB) of the Act was denied on the ground that Form No. 3CL was not furnished by the assessee before completion of assessment approving the R & D expenditure by DSIR. We observe that in the appellate proceedings the assessee furnished Form No. 3CL issued by DSIR quantifying the expenditure allowable for weighted deduction under section 35(2AB) of the Act, based on which the Id. CIT (Appeals) allowed the claim for weighted deduction to the extent of Rs.6,14,64,000/-. We further observe that the Revenue expenditure to the extent of Rs.1,35,24,607/- which was not approved for weighted deduction by DSIR was directed to be allowable as Revenue expenditure under section 37 of the Act while computing the income of the assessee by the Id. CIT (Appeals) observing as under:-

“4.4 I have gone through the facts of the case and the submission made by the AR. The AR has contended that the issue of various Forms like 3CM & 3CL is procedural in nature and does not take away the claim of deduction u/s 35(2AB) of the Act. Moreover, Form 3CL issued by DSIR on 24.01.2017 has already been admitted as additional evidence and from this Form it is observed that DSIR has approved Capital expenditure of Rs.45.70 lakhs and Revenue expenditure of Rs.261.62 lakhs (total Rs.307.32 lakhs) as eligible expenditure u/s 35(2AB) of the Act. It is further observed that early issue of

this Form by DSIR is not in the hands of the appellant. The AR has also contended that the AO had written a letter to the Secretary, DSIR in which the AO advised DSI consider various factors highlighted by him in his letter dated 22.10.2016 before issue of approval in Form No. 3CL and the DSIR has issued Form 3CL on 24.01.2017 after considering the letter sent by the AO. The AR has also submitted that the DSIR Officers had already visited the R&D facility of the appellant and had granted the appellant a certificate of registration on 20.07.2012. It is further contended that the Inspectors of the Department are not more competent for reviewing the R&D facilities than the scientists of DSIR, as it requires technical knowledge. It is further submitted that under similar circumstances, the Ld. CIT (A) has allowed the issue of grant of deduction u/s 35(2AB) of the Act in favour of the appellant for AY 2013-14. I have perused the said order in which the issue has been allowed in favour of the appellant. Moreover, the AO has also allowed the deduction u/s 35(2AB) to the appellant for AYS 2015-16 & 2016-17 under similar circumstances. In view of all these facts, there is no doubt that the appellant is eligible for weighted deduction u/s 35(2AB) of the Act in respect of the expenditure approved by DSIRAs already observed, DSIR has approved capital expenditure of Rs45.70 lakhs and revenue expenditure of Rs.261.62 lakhs (total Rs307.32 lakhs) as eligible expenditure u/s 35(2AB) of the Act. Accordingly, the appellant is eligible for deduction of Rs.6,14,64,000/- @200% u/s 35(2AB) of the Act (as against the deduction of Rs8,83,89,286/- claimed by the appellant).

4.5 It is further observed that in the ITR, the appellant has claimed weighted deduction in respect of revenue expenditure of Rs. 3,96,86,607/- out of which DSIR has approved revenue expenditure of Rs.2,61,62,000/-. In respect of the balance revenue expenditure of Rs.1,35,24,607/-, the appellant has contended that the AO has denied the allowability of the same as revenue expenditure u/s 37(1) also and the same may be allowed. In this regard, in the remand report, the AO has given the breakup of the total revenue expenditure of Rs3,96,86,607/- and has stated that in respect of some expenses like rent, repair & maintenance, travelling & conveyance, the appellant had not furnished the details and the issue of allowability of revenue expenses may be decided

on merits. However, a perusal of the assessment order shows that the AO has not questioned the genuineness and allowability of these expenses. Moreover, during the course of appellate proceedings, on being asked, the AR has furnished these details and it is observed that these expenses have been incurred for the purposes of the business and therefore the same are allowable as revenue expenditure. In view of this, the balance expenses of Rs.1,35,24,607/- are allowable as revenue expenses and the AO is directed accordingly. The grounds of appeal are therefore, partly allowed.”

7. We further observe that an identical issue came up for consideration before the Tribunal in assessee’s own case for the assessment year 2013-14 wherein the Tribunal held as under:-

“2. The company is engaged in developing suitable and contemporary technologies to meet the various emissions norms as per International Standards from its own R&D set-up located at Plot No. 4, 20th Milestone, Mathura Road, Faridabad.

3. During the year under consideration in its computation of income, the assessee has added R&D expenses amounting to Rs. 3,85,19,630/- and deducted R&D allowable expenses amounting to Rs. 13,37,72,569/-.

4. The assessee has submitted before the AO that as per the provisions of section 35(2AB) of the Act weighted deduction of 150% to be allowed for expenditure (both capital and revenue) incurred on in-house research and developments by companies where such facilities are approved by the Department of Scientific & Industrial Research, Ministry of Science & Technology, Government of India. In support of its contention, the assessee has enclosed the copy of recognition granted by DSIR and application in support of approval for expenses Form 3CM. Since the approval for the expenses is not received from DSIR in Form 3CL till the finalization of the assessment, therefore assessee has made claim u/s 35(1) at Rs. 6,82,77,226/- and made request for net disallowance of Rs. 6,54,95,343/- being the difference of deduction u/s 35(2AB) originally claimed and the fresh claim u/s 35(1).

5. Since, the assessee has made fresh claim vide letter dated 22.01.2016, no revised return was filed and approval from DSIR was not received, therefore, the AO has disallowed the claim of deduction u/s 35(2AB) of Rs. 13,37,72,569/- and added it back to the taxable income of the assessee.

6. Later qua form 3CL, the DSIR approved the claim for weighted deduction of capital expenditure while that for revenue expenditure was declined. The company, however, insisted that the revenue expenses as incurred should be allowed to it as deduction u/s 35(1) / 37(1) of the Act. On appeal, the ld. CIT(A) held that the assessee is not entitled to claim weighted deduction at Rs.3,85,19,630/- as it is not approved from DSIR in approval granted in Form 3CL and confirmed an amount of Rs.3,85,19,630/- and balance addition of Rs.9,52,52,939/- was deleted.

7. There is no quarrel on the proposition that the DSIR has approved the weighted deduction for capital expenses. Those expenses were in a sum of Rs. 2,97,57,596/- which is acknowledged in the assessment order by the AO. What has not been permitted u/s 35(2AB) of the Act by the DSIR is the weighted deduction for the claim for revenue expenditure. The Respondent's case has been that if weighted deduction is not permitted for revenue expenses then at least normal deduction should be permitted for the R&D expenses which indeed had been incurred by the assessee wholly, necessarily and exclusively for the purpose of business. The Ld. CIT (A) has accepted the pleading of the assessee.

8. In view of the approval for capital expenses as granted by the DSIR, the claim as allowed by the Ld. CIT(A) and hence the same cannot be faulted. The claim for revenue expenses is required to be allowed even otherwise in terms of the regular provisions of the Income Tax Act.”

8. In view of what is discussed above, we do not see any infirmity in the order passed by the ld. CIT (Appeals) in allowing the weighted deduction under section 35(2AB) of the Act to the extent of Rs.6,14,64,000/- and also deduction under section 37(1) of the

Act in respect of the Revenue expenditure of Rs.1,35,24,607/-. Thus we sustain the order of the Id. CIT (Appeals) and reject this ground of appeal of the Revenue.

9. Coming to ground No. 2 of the appeal of the Revenue i.e. deletion of addition made under section 68 of the Act, the facts are that the Assessing Officer while completing the assessment noticed that assessee company received un-secured loan of Rs.2.20 crores from M/s. B. D. Vanijya Udyog Pvt. Ltd., a Kolkata based company. The assessee was required to furnish evidence in support of identification of the loan creditor and to establish the creditworthiness and genuineness of the transaction. The assessee furnished all the relevant documents before the Assessing Officer to prove the identity, creditworthiness and genuineness of the transaction. The Assessing Officer also issued commission to DDIT (Investigation Wing) Kolkata to verify the identity, creditworthiness and genuineness of the creditor company. The loan creditor M/s. B. D. Vanijya Udyog Pvt. Ltd., submitted relevant papers before the DDIT (Investigation Wing) Kolkata and this fact was also brought to the notice of the Assessing Officer by the assessee and submitted that it has received loan from M/s. B. D. Vanijya Udyog Pvt. Ltd. and said company has produced all the relevant documents to prove the identity, genuineness and creditworthiness of the transaction. However, the Assessing Officer made addition under section 68 of the Act observing that the report sent by DDIT (Investigation Wing) Kolkata proves that the loan creditor though submitted some of the documents the principal officer of the said company was not present for deposition. The Assessing Officer

disbelieved the documents furnished by the assessee and added the loan of Rs.2.20 crores as unexplained credit under section 68 of the Act. On appeal the ld. CIT (Appeals) deleted the addition.

10. The ld. DR before us strongly supporting the order of the Assessing Officer and the investigation conducted by the DDIT, Kolkata and the report. The ld. DR submitted that the ld. CIT (Appeals) is not justified in deleting the addition as the assessee has failed to prove the creditworthiness, identity and genuineness of the transaction.

11. On the other hand, the ld. Counsel for the assessee strongly placed reliance on the order of the ld. CIT (Appeals). The ld. Counsel for the assessee further submits that the creditor company, namely, M/s. B. D. Vanijya Udyog Pvt. Ltd. is not a shell company and the said company is conducting its regular business, the company is registered as NBFC company, the company has declared interest income in its return of income. The ld. Counsel further referring to page 171 of the paper book submits that this is the certificate issued by the Karnataka Bank Ltd., wherein it has been certified that M/s. B. D. Vanijya Udyog Pvt. Ltd. was enjoying over-draft limit of Rs.7 crores and an amount of Rs.2.20 crores has been remitted on 3.10.2013 in favour of the assessee company by debiting the over-draft account of M/s. B. D. Vanijya Udyog Pvt. Ltd. Therefore, the ld. Counsel for the assessee submits that the loan transaction with M/s. B. D. Vanijya Udyog Pvt. Ltd. is a genuine transaction, the creditor is identified, the transaction is genuine, the creditworthiness is

proved and, therefore, the ld. CIT (Appeals) has rightly deleted the addition made under section 68 of the Act.

12. Heard rival contentions perused the orders of the authorities below and evidences furnished before us. We see considerable force in the submissions of the ld. Counsel for the assessee. In the course of assessment proceedings the assessee furnished copy of Income Tax Return of the creditor M/s. B. D. Vanijya Udyog Pvt. Ltd. confirmation from the creditor, copy of balance sheet of the creditor, extracts of the bank statement of loan creditor to establish the identity, creditworthiness and genuineness of the transaction. We further observe that M/s. B. D. Vanijya Udyog Pvt. Ltd. the loan creditor in the course of investigation proceedings with DDIT, Investigation Wing, Kolkata, furnished copy of ITR for assessment years 2009-10 and 2014-15, audited financial statements and tax audit report for the year ended 31st March, 2014, copy of ledger account of M/s. Ecocat India Pvt. Ltd. in the books of M/s. B. D. Vanijya Udyog Pvt. Ltd. for financial year 2013-14, transaction statement from M/s. Ecocat India Pvt. Ltd., bank statement high-lighting the debit and credit transactions, a declaration to the effect that loan creditor is a NBFC company earning interest income and trading in shares, source of loan given to M/s. Ecocat India Pvt. Ltd. (the assessee) is out of cash credit balance from M/s. Karnataka Bank Ltd. However, not appreciating these evidences the Assessing Officer treated the loan as unexplained for the reason that the DDIT, Investigation Wing, Kolkata, is not satisfied with the evidences furnished by M/s. B. D.

Vanijya Udyog Pvt. Ltd. and the principal officer was not produced before them.

13. We observe that the evidences furnished by the assessee before the Assessing Officer in the form of copy of Income Tax Return, confirmation from the creditor, copy of balance sheet, extracts of the bank statement of the loan creditor explains the fact that the loan creditor has filed its return of income for the year under consideration declaring net income of Rs.29,63,710/- and has paid taxes on the same. On perusal of the balance sheet of the loan creditor it is clear that the capital account and reserves of the company stood at Rs.15,65,58,169/- as on 31st March, 2014. The loans and advances of the creditor company stood at Rs.10,62,64,984/-. On the date of loan i.e. 3.10.2013, before disbursement of loan to the assessee company the balance of bank account of creditor company stood at Rs.8,83,089/- (credit and the bank statement reveals that an amount of Rs.2.20 crores was advanced as loan to the assessee company through RTGS making its balance at Rs.2,11,16,910/- (debit). It is clear from the bank statement that the balance remained at over draft. This fact was also confirmed by the Karnataka Bank Ltd. in its certificate dated 22.05.2017 which is placed at paper book page No. 73 wherein it has been clearly stated that the creditor company was enjoying over-draft limit of Rs.7 crores and an amount of Rs.2.20 crores has been remitted on 3.10.2013 in favour of the assessee by debiting the over-draft account of the creditor company.

14. We further observe that the evidences furnished by the loan creditor M/s. B. D. Vanijya Udyog Pvt. Ltd. before the DDIT, Investigation Wing, Kolkata, clearly proves that the identity, creditworthiness and genuineness of the transaction. We further observe that all these evidences and submissions of the assessee were considered by the Id. CIT (Appeals) and deleted the addition observing as under:-

“5.3 I have considered the facts of the case and the submission made by the AR. It has been submitted that the appellant has already filed various documents including the copy of ITR confirmation, Balance sheet and Bank statement of the lender company i.e. M/s BDVU to the AO. The documents furnished by the lender company independently to the DDIT(Inv), Kolkata, after issue of commission by the AO, have also been furnished as additional evidence during appellate proceedings (which has already been admitted above)It is observed from the Balance sheet of BDVU that the said company has Reserves & Surplus of Rs.10.62 crores and Share Capital of Rs.5.02 crores and the said company has given loans & advances of Rs.10.62 crores out of which a sum of Rs.2.20 crores has been given to the appellant company. It is further observed that the le company has filed ITR showing total income of Rs.29,63,710/- during AY 2014-15 said company is registered as an NBFC and has obtained over draft limit of Rs.7 crores from Karnataka Bank in respect of which the appellant has furnished certificate from Karnataka Bank as additional evidence and in the said certificate, it has been stated that the sum of Rs.2.20 crores has been remitted to the appellant company by debiting the OD account of BDVUI have also perused the report of DDIT(Inv.) Kolkata from which it appears that the DDIT(Inv) Kolkata has not appreciated the facts completely. In the report names of various companies and individuals have been mentioned which are not related to the lender company BDVU and without giving any basis, the said company along with various other companies have been stated to be shell companies. After perusal of the documents on record. I am of the opinion that there is no doubt the identity of the lender as complete details including the copy of ITR

confirmation, Balance sheet and Bank statement of the lender company have been filed and the same are easily verifiable. The genuineness of the transaction also cannot be doubted as the transaction has taken place through banking channels. The appellant has duly paid interest to the lender and has deducted TDS on the same. As far as the creditworthiness of the lender company is concerned, it has been observed above that the payment has been made from the OD Account by the lender company and relevant documents in this regard have been furnished to the AO and also during the course of appellate proceedings. The lender company BDVU has sufficient funds which is apparent from its Balance sheet and the certificate issued by Karnataka Bank. In view of all these facts, I am of the opinion that there is no reason to treat the loan taken by the appellant as unexplained u/s 68 of the Act. Accordingly, the addition made by the AO is deleted and the grounds of appeal are allowed.”

15. In view of what is discussed above, we hold that the identity, creditworthiness and genuineness of the transaction in respect of loan of Rs.2.20 crores received by the assessee from M/s. B. D. Vanijya Udyog Pvt. Ltd. has been proved and, therefore, the Id. CIT (Appeals) has rightly deleted the addition. We sustain the order of the Id. CIT (Appeals) and reject ground No. 2 of Revenue’s appeal.

16. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on : 17/11/2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 17/11/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee
2. राजस्व / Revenue
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	14.11.2023
Date on which the typed draft is placed before the dictating Member	15.11.2023
Date on which the typed draft is placed before the Other Member	17.11.2023
Date on which the approved draft comes to the Sr. PS/PS	17.11.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	17.11.2023
Date on which the fair order comes back to the Sr. PS/PS	17.11.2023
Date on which the final order is uploaded on the website of ITAT	17.11.2023
Date on which the file goes to the Bench Clerk	17.11.2023

I.T.A. No. 8521/Del/2019

Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	